

AMENDED IN ASSEMBLY MARCH 13, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2126

Introduced by Assembly Member Horton

February 20, 2008

~~An act to amend Section 530.5 of the Penal Code, relating to personal identifying information. An act to amend Section 502.01 of the Penal Code, relating to identity theft.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2126, as amended, Horton. ~~Personal identifying information: offenses. Identity theft.~~

Existing law provides that any computer, computer system, computer network, or any software or data, owned by the defendant that is used during the commission of specified offenses shall be subject to forfeiture.

This bill would add specified acts involving forgery and insurance fraud to the list of offenses for which a computer, computer system, computer network, or any software or data used in the commission of the offense would be subject to forfeiture.

~~Existing law establishes the offense of willfully obtaining personal identifying information and using that information for an unlawful purpose, as specified.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 502.01 of the Penal Code is amended to
2 read:

3 502.01. (a) As used in this section:

4 (1) “Property subject to forfeiture” means any property of the
5 defendant that is illegal telecommunications equipment as defined
6 in subdivision (g) of Section 502.8, or a computer, computer
7 system, or computer network, and any software or data residing
8 thereon, if the telecommunications device, computer, computer
9 system, or computer network was used in committing a violation
10 of, or conspiracy to commit a violation of, subdivision (b) of
11 Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5,
12 311.10, 311.11, 422, 470, 470a, 470b, 472, 475, 476, 480, 483.5,
13 484g, ~~or subdivision (a), (b), or (d) of Section 484e, subdivision~~
14 ~~(a) subdivisions (a) and (b) of Section 484f, subdivision (b) or (c)~~
15 of Section 484i, subdivision (c) of Section 502, ~~or Section 502.7,~~
16 502.8, 529, 529a, ~~or 530.5, 537e, 593d, 593e, or 646.9, or Section~~
17 1871.4 of the Insurance Code, or was used as a repository for the
18 storage of software or data obtained in violation of those
19 provisions. Forfeiture shall not be available for any property used
20 solely in the commission of an infraction. If the defendant is a
21 minor, it also includes property of the parent or guardian of the
22 defendant.

23 (2) “Sentencing court” means the court sentencing a person
24 found guilty of violating or conspiring to commit a violation of
25 ~~subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2,~~
26 ~~311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475,~~
27 ~~476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section~~
28 ~~484e, subdivision (d) of Section 484e, subdivision (a) of Section~~
29 ~~484f, subdivision (b) or (c) of Section 484i, subdivision (c) of~~
30 Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d,
31 593e, ~~or 646.9 any provision listed in paragraph (1), or, in the~~
32 case of a minor, found to be a person described in Section 602 of
33 the Welfare and Institutions Code because of a violation of those
34 provisions, the juvenile court.

35 (3) “Interest” means any property interest in the property subject
36 to forfeiture.

37 (4) “Security interest” means an interest that is a lien, mortgage,
38 security interest, or interest under a conditional sales contract.

1 (5) “Value” has the following meanings:

2 (A) When counterfeit items of computer software are
3 manufactured or possessed for sale, the “value” of those items
4 shall be equivalent to the retail price or fair market price of the
5 true items that are counterfeited.

6 (B) When counterfeited but unassembled components of
7 computer software packages are recovered, including, but not
8 limited to, counterfeited computer diskettes, instruction manuals,
9 or licensing envelopes, the “value” of those components of
10 computer software packages shall be equivalent to the retail price
11 or fair market price of the number of completed computer software
12 packages that could have been made from those components.

13 (b) The sentencing court shall, upon petition by the prosecuting
14 attorney, at any time following sentencing, or by agreement of all
15 parties, at the time of sentencing, conduct a hearing to determine
16 whether any property or property interest is subject to forfeiture
17 under this section. At the forfeiture hearing, the prosecuting
18 attorney shall have the burden of establishing, by a preponderance
19 of the evidence, that the property or property interests are subject
20 to forfeiture. The prosecuting attorney may retain seized property
21 that may be subject to forfeiture until the sentencing hearing.

22 (c) Prior to the commencement of a forfeiture proceeding, the
23 law enforcement agency seizing the property subject to forfeiture
24 shall make an investigation as to any person other than the
25 defendant who may have an interest in it. At least 30 days before
26 the hearing to determine whether the property should be forfeited,
27 the prosecuting agency shall send notice of the hearing to any
28 person who may have an interest in the property that arose before
29 the seizure.

30 A person claiming an interest in the property shall file a motion
31 for the redemption of that interest at least 10 days before the
32 hearing on forfeiture, and shall send a copy of the motion to the
33 prosecuting agency and to the probation department.

34 If a motion to redeem an interest has been filed, the sentencing
35 court shall hold a hearing to identify all persons who possess valid
36 interests in the property. No person shall hold a valid interest in
37 the property if, by a preponderance of the evidence, the prosecuting
38 agency shows that the person knew or should have known that the
39 property was being used in violation of, or conspiracy to commit
40 a violation of, ~~subdivision (b) of Section 272, Section 288, 288.2,~~

1 ~~311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472,~~
2 ~~475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section~~
3 ~~484e, subdivision (a) of Section 484f, subdivision (b) or (c) of~~
4 ~~Section 484i, subdivision (c) of Section 502, or Section 502.7,~~
5 ~~502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9 any provision~~
6 ~~listed in paragraph (1) of subdivision (a), and that the person did~~
7 ~~not take reasonable steps to prevent that use, or if the interest is a~~
8 ~~security interest, the person knew or should have known at the~~
9 ~~time that the security interest was created that the property would~~
10 ~~be used for a violation.~~

11 (d) If the sentencing court finds that a person holds a valid
12 interest in the property, the following provisions shall apply:

13 (1) The court shall determine the value of the property.

14 (2) The court shall determine the value of each valid interest in
15 the property.

16 (3) If the value of the property is greater than the value of the
17 interest, the holder of the interest shall be entitled to ownership of
18 the property upon paying the court the difference between the
19 value of the property and the value of the valid interest.

20 If the holder of the interest declines to pay the amount determined
21 under paragraph (2), the court may order the property sold and
22 designate the prosecutor or any other agency to sell the property.
23 The designated agency shall be entitled to seize the property and
24 the holder of the interest shall forward any documentation
25 underlying the interest, including any ownership certificates for
26 that property, to the designated agency. The designated agency
27 shall sell the property and pay the owner of the interest the
28 proceeds, up to the value of that interest.

29 (4) If the value of the property is less than the value of the
30 interest, the designated agency shall sell the property and pay the
31 owner of the interest the proceeds, up to the value of that interest.

32 (e) If the defendant was a minor at the time of the offense, this
33 subdivision shall apply to property subject to forfeiture that is the
34 property of the parent or guardian of the minor.

35 (1) The prosecuting agency shall notify the parent or guardian
36 of the forfeiture hearing at least 30 days before the date set for the
37 hearing.

38 (2) The computer or telecommunications device shall not be
39 subject to forfeiture if the parent or guardian files a signed
40 statement with the court at least 10 days before the date set for the

1 hearing that the minor shall not have access to any computer or
2 telecommunications device owned by the parent or guardian for
3 two years after the date on which the minor is sentenced.

4 (3) If the minor is convicted of a violation of Section 288, 288.2,
5 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472,
6 476, 480, or subdivision (b) of Section 484e, subdivision (d) of
7 Section 484e, subdivision (a) of Section 484f, subdivision (b) of
8 Section 484i, subdivision (c) of Section 502, or Section 502.7,
9 502.8, 529, 529a, or 530.5, within two years after the date on which
10 the minor is sentenced, and the violation involves a computer or
11 telecommunications device owned by the parent or guardian, the
12 original property subject to forfeiture, and the property involved
13 in the new offense, shall be subject to forfeiture notwithstanding
14 paragraph (2).

15 (4) Notwithstanding paragraph (1), (2), or (3), or any other
16 provision of this chapter, if a minor's parent or guardian makes
17 full restitution to the victim of a crime enumerated in this chapter
18 in an amount or manner determined by the court, the forfeiture
19 provisions of this chapter do not apply to the property of that parent
20 or guardian if the property was located in the family's primary
21 residence during the commission of the crime.

22 (f) Notwithstanding any other provision of this chapter, the court
23 may exercise its discretion to deny forfeiture where the court finds
24 that the convicted defendant, or minor adjudicated to come within
25 the jurisdiction of the juvenile court, is not likely to use the
26 property otherwise subject to forfeiture for future illegal acts.

27 (g) If the defendant is found to have the only valid interest in
28 the property subject to forfeiture, it shall be distributed as follows:

29 (1) First, to the victim, if the victim elects to take the property
30 as full or partial restitution for injury, victim expenditures, or
31 compensatory damages, as defined in paragraph (1) of subdivision
32 (e) of Section 502. If the victim elects to receive the property under
33 this paragraph, the value of the property shall be determined by
34 the court and that amount shall be credited against the restitution
35 owed by the defendant. The victim shall not be penalized for
36 electing not to accept the forfeited property in lieu of full or partial
37 restitution.

38 (2) Second, at the discretion of the court, to one or more of the
39 following agencies or entities:

40 (A) The prosecuting agency.

1 (B) The public entity of which the prosecuting agency is a part.

2 (C) The public entity whose officers or employees conducted
3 the investigation resulting in forfeiture.

4 (D) Other state and local public entities, including school
5 districts.

6 (E) Nonprofit charitable organizations.

7 (h) If the property is to be sold, the court may designate the
8 prosecuting agency or any other agency to sell the property at
9 auction. The proceeds of the sale shall be distributed by the court
10 as follows:

11 (1) To the bona fide or innocent purchaser or encumbrancer,
12 conditional sales vendor, or mortgagee of the property up to the
13 amount of his or her interest in the property, if the court orders a
14 distribution to that person.

15 (2) The balance, if any, to be retained by the court, subject to
16 the provisions for distribution under subdivision (g).

17 ~~SECTION 1. Section 530.5 of the Penal Code is amended to~~
18 ~~read:~~

19 ~~530.5. (a) Any person who willfully obtains personal~~
20 ~~identifying information, as defined in subdivision (b) of Section~~
21 ~~530.55, of another person, and uses that information for any~~
22 ~~unlawful purpose, including to obtain, or attempt to obtain, credit,~~
23 ~~goods, services, real property, or medical information without the~~
24 ~~consent of that person, is guilty of a public offense, and upon~~
25 ~~conviction therefor, shall be punished by a fine, by imprisonment~~
26 ~~in a county jail not to exceed one year, or by both a fine and~~
27 ~~imprisonment, or by imprisonment in the state prison.~~

28 ~~(b) In any case in which a person willfully obtains personal~~
29 ~~identifying information of another person, uses that information~~
30 ~~to commit a crime in addition to a violation of subdivision (a), and~~
31 ~~is convicted of that crime, the court records shall reflect that the~~
32 ~~person whose identity was falsely used to commit the crime did~~
33 ~~not commit the crime.~~

34 ~~(c) (1) Every person who, with the intent to defraud, acquires~~
35 ~~or retains possession of the personal identifying information, as~~
36 ~~defined in subdivision (b) of Section 530.55, of another person is~~
37 ~~guilty of a public offense, and upon conviction therefor, shall be~~
38 ~~punished by a fine, by imprisonment in a county jail not to exceed~~
39 ~~one year, or by both a fine and imprisonment.~~

1 ~~(2) Every person who, with the intent to defraud, acquires or~~
2 ~~retains possession of the personal identifying information, as~~
3 ~~defined in subdivision (b) of Section 530.55, of another person,~~
4 ~~and who has previously been convicted of a violation of this~~
5 ~~section, upon conviction therefor shall be punished by a fine, by~~
6 ~~imprisonment in a county jail not to exceed one year, or by both~~
7 ~~a fine and imprisonment, or by imprisonment in the state prison.~~

8 ~~(3) Every person who, with the intent to defraud, acquires or~~
9 ~~retains possession of the personal identifying information, as~~
10 ~~defined in subdivision (b) of Section 530.55, of 10 or more other~~
11 ~~persons is guilty of a public offense, and upon conviction therefor,~~
12 ~~shall be punished by a fine, by imprisonment in a county jail not~~
13 ~~to exceed one year, or by both a fine and imprisonment, or by~~
14 ~~imprisonment in the state prison.~~

15 ~~(d) (1) Every person who, with the intent to defraud, sells,~~
16 ~~transfers, or conveys the personal identifying information, as~~
17 ~~defined in subdivision (b) of Section 530.55, of another person is~~
18 ~~guilty of a public offense, and upon conviction therefor, shall be~~
19 ~~punished by a fine, by imprisonment in a county jail not to exceed~~
20 ~~one year, or by both a fine and imprisonment, or by imprisonment~~
21 ~~in the state prison.~~

22 ~~(2) Every person who, with actual knowledge that the personal~~
23 ~~identifying information, as defined in subdivision (b) of Section~~
24 ~~530.55, of a specific person will be used to commit a violation of~~
25 ~~subdivision (a), sells, transfers, or conveys that same personal~~
26 ~~identifying information is guilty of a public offense, and upon~~
27 ~~conviction therefor, shall be punished by a fine, by imprisonment~~
28 ~~in the state prison, or by both a fine and imprisonment.~~

29 ~~(e) Every person who commits mail theft, as defined in Section~~
30 ~~1708 of Title 18 of the United States Code, is guilty of a public~~
31 ~~offense, and upon conviction therefor shall be punished by a fine,~~
32 ~~by imprisonment in a county jail not to exceed one year, or by both~~
33 ~~a fine and imprisonment. Prosecution under this subdivision shall~~
34 ~~not limit or preclude prosecution under any other provision of law,~~
35 ~~including, but not limited to, subdivisions (a) to (c), inclusive, of~~
36 ~~this section.~~

37 ~~(f) An interactive computer service or access software provider,~~
38 ~~as defined in subsection (f) of Section 230 of Title 47 of the United~~
39 ~~States Code, shall not be liable under this section unless the service~~

- 1 or provider acquires, transfers, sells, conveys, or retains possession
- 2 of personal information with the intent to defraud.

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